

By Birns

S. B. No. 74

A BILL TO BE ENTITLED

AN ACT

relating to the rule-making authority of the Texas Water Commission regarding underground water.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 28.011, Water Code, is repealed.

SECTION 2. On and after the effective date of this Act, a rule adopted under Section 28.011, Water Code, has no effect and may not be enforced.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE
73rd Regular Session

February 8, 1993

TO: Honorable Bill Sims, Chair
Committee on Natural Resources
Senate Chamber
Austin, Texas

IN RE: Senate Bill No. 74
By: Bivins

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Senate Bill No. 74 (relating to the rule-making authority of the Texas Water Commission regarding underground water) this office has determined the following:

Due to the uncertainty of current law, the fiscal implications, if any, cannot be determined.

Source: Texas Water Commission;
LBB Staff: JO, JWH, EC, JLG, LC

S.B. No. 74

By Burke

A BILL TO BE ENTITLED

AN ACT: relating to the rule-making authority of the Texas Water Commission regarding underground water.

12-30-92

JAN 13 1993

Filed with the Secretary of the Senate

NATURAL RESOURCES

Read and referred to Committee on _____

Reported favorably _____

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by:

{ unanimous consent

_____ yeas, _____ nays

Read second time, _____, and ordered engrossed by:

{ unanimous consent
a viva voce vote

_____ yeas, _____ nays

Caption ordered amended to conform to the body of the bill.

Senate and Constitutional 3 Day Rule suspended by a vote of _____ yeas, _____ nays.

Read third time, _____, and passed by:

{ A viva voce vote

_____ yeas, _____ nays

SECRETARY OF THE SENATE

OTHER ACTION:

Engrossed

Sent to House

Engrossing Clerk _____

Received from the Senate

Read first time and referred to Committee on _____

Reported favorably amended, sent to Printer at _____

Printed and Distributed _____

Sent to Committee on Calendars _____

Read Second time (amended): passed to third reading (failed)

by (Non-Record Vote) Record Vote of _____ yeas, _____ nays _____ present not voting.

Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of _____ yeas, _____ nays _____ present not voting.

Read third time (amended): finally passed (failed) by a (Non-Record Vote) Record Vote of
_____ yeas, _____ nays _____ present not voting.

Caption ordered amended to conform to body of bill.

Returned to Senate.

CHIEF CLERK OF THE HOUSE

Returned from House without amendment.

Returned from House with _____ amendments.

Concurred in House amendments by a viva voce vote _____ yeas, _____ nays.

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____, Chairman; _____, _____, _____, _____.

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by: _____

{ a viva voce vote
_____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged.

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
_____ yeas, _____ nays

MR

BILL ANALYSIS

Senate Research Center

S.B. 74
By: Bivins
Natural Resources
2-5-93
As filed

BACKGROUND

On March 11, 1941, Attorney General Opinion #O-3205 said former Penal Code article 848a, which is the predecessor statute to Section 28.011, Water Code, gave the then-Board of Water Engineers the right to regulate privately owned water wells. On April 18, 1941, the attorney general issued Opinion #O-3205-A, which determined the previous opinion was wrong and that Section 28.011 was not a constitutionally valid delegation of rulemaking authority. This section was never repealed. On November 4, 1991, Attorney General Opinion #DM-54 said the 1941 opinion is no longer valid. DM-54 did not specifically address the intent of Section 28.011 of the Water Code.

PURPOSE

As proposed, S.B. 74 repeals Section 28.011, Water Code. That section requires the Texas Water Commission to make and enforce rules and regulations for conserving, protecting, and distributing underground water.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Repealer: Section 28.011, Water Code (Underground Water: Regulations).

SECTION 2. Provides that on and after the effective date of Act, a rule under Section 28.011, Water Code, has no effect, and prohibits that section from being enforced.

SECTION 3. Emergency clause.
Effective date: upon passage.

BILL ANALYSIS

Senate Research Center

C.S.S.B. 74
By: Bivins
Natural Resources
3-18-93
Committee Substitute

BACKGROUND

On March 11, 1941, Attorney General Opinion #O-3205 said former Penal Code article 848a, which is the predecessor statute to Section 28.011, Water Code, gave the then-Board of Water Engineers the right to regulate privately owned water wells. On April 18, 1941, the attorney general issued Opinion #O-3205-A, which determined the previous opinion was wrong and that Section 28.011 was not a constitutionally valid delegation of rulemaking authority. This section was never repealed. On November 4, 1991, Attorney General Opinion #DM-54 said the 1941 opinion is no longer valid. DM-54 did not specifically address the intent of Section 28.011 of the Water Code.

PURPOSE

As proposed, C.S.S.B. 74 repeals Section 28.011, Water Code, relating to ground water regulation. This bill also authorizes the Texas Water Commission to adopt rules to protect groundwater quality.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is granted to the Texas Water Commission under SECTIONS 2 and 3 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Repealer: Section 28.011, Water Code (Underground Water: Regulations).

SECTION 2. Section 28.012, Water Code, by adding Subsection (b), to authorize the Texas Water Commission (commission) to adopt any rules necessary to enforce this section that relates to plugging or casing certain water wells.

SECTION 3. Amends Chapter 26B, Water Code, by adding Section 26.0235, as follows:

Sec. 26.0235. RULES TO PROTECT GROUNDWATER QUALITY. Authorizes the commission to adopt and enforce rules necessary to protect the quality of groundwater. Provides that this section does not authorize the commission to adopt rules for permitting or regulating the pumping of groundwater or rules that would otherwise affect ownership rights of groundwater. Authorizes the commission to adopt rules for regulating the pumping of groundwater if there is clear and convincing evidence of imminent contamination.

SECTION 4. (a) Provides that the rules contained in Chapter 313, Title 31, Administrative Code, adopted under the stated authority of Section 28.011, Water Code, are found to be within the delegated rulemaking authority of the commission or its successor under Chapters 5 and 26, Water Code, without reliance on the repealed Section 28.011.

(b) Provides that the rules contained in Chapter 287, Title 31, Administrative Code, adopted under the stated authority of Section 28.011, Water Code, are found to be within the delegated rulemaking authority of the Texas Water Commission or its successor. Provides that amendments to those rules after the repeal of Section 28.011, Water Code, shall rely on the delegated rulemaking authority contained in Chapters 5 and 26, Section 28.012(b), Section 28.030(a), and Chapter 32, Water Code.

SECTION 5. Emergency clause.
Effective date: upon passage.

BILL ANALYSIS

Senate Research Center

C.S.S.B. 74
By: Bivins
Natural Resources
3-30-93
Committee Substitute

BACKGROUND

On March 11, 1941, Attorney General Opinion #O-3205 said former Penal Code article 848a, which is the predecessor statute to Section 28.011, Water Code, gave the then-Board of Water Engineers the right to regulate privately owned water wells. On April 18, 1941, the attorney general issued Opinion #O-3205-A, which determined the previous opinion was wrong and that Section 28.011 was not a constitutionally valid delegation of rulemaking authority. This section was never repealed. On November 4, 1991, Attorney General Opinion #DM-54 said the 1941 opinion is no longer valid. DM-54 did not specifically address the intent of Section 28.011 of the Water Code.

PURPOSE

As proposed, C.S.S.B. 74 repeals Section 28.011, Water Code, relating to ground water regulation. This bill also authorizes the Texas Water Commission to adopt rules to protect groundwater quality.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is granted to the Texas Water Commission under SECTIONS 2 and 3 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Repealer: Section 28.011, Water Code (Underground Water: Regulations).

SECTION 2. Section 28.012, Water Code, by adding Subsection (b), to require the Texas Water Commission (commission) to adopt any rules necessary to enforce this section that relates to plugging or casing certain water wells.

SECTION 3. Amends Chapter 26B, Water Code, by adding Section 26.0235, as follows:

Sec. 26.0235. RULES TO PROTECT GROUNDWATER QUALITY. Authorizes the commission to adopt and enforce rules necessary to protect the quality of groundwater. Provides that this section does not authorize the commission to adopt rules for permitting or regulating the pumping of groundwater or rules that would otherwise affect ownership rights of groundwater. Authorizes the commission to adopt rules for regulating the pumping of groundwater if there is clear and convincing evidence of imminent contamination.

SECTION 4. (a) Provides that the rules contained in Chapter 313, Title 31, Administrative Code, adopted under the stated authority of Section 28.011, Water Code, are found to be within the delegated rulemaking authority of the commission or its successor under Chapters 5 and 26, Water Code, without reliance on the repealed Section 28.011.

(b) Provides that the rules contained in Chapter 287, Title 31, Administrative Code, adopted under the stated authority of Section 28.011, Water Code, are found to be within the delegated rulemaking authority of the Texas Water Commission or its successor. Provides that amendments to those rules after the repeal of Section 28.011, Water Code, shall rely on the delegated rulemaking authority contained in Chapters 5 and 26, Section 28.012(b), Section 28.030(a), and Chapter 32, Water Code.

SECTION 5. Emergency clause.
Effective date: upon passage.